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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 ALLSTATE INSURANCE COMPANY,
ALLSTATE PROPERTY & CASUALTY
16 INSURANCE COMPANY, ALLSTATE
INDEMNITY COMPANY, and ALLSTATE
17 FIRE & CASUALTY INSURANCE
COMPANY,

18 Plaintiffs,

19 v.

20 MARJORIE BELSKY, MD; MARIO
21 TARQUINO, MD; MARJORIE BELSKY,
MD, INC., doing business as INTEGRATED
22 PAIN SPECIALISTS; and MARIO
TARQUINO, MD, INC., DOES 1-100, and
23 ROES 101-200,

24 Defendants.

25 AND RELATED CLAIMS
26
27
28

CASE NO. 2:15-cv-2265-MMD-CWH

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS FROM NETTLES
LAW FIRM [ECF No. 331]**

1 Presently before the Court is a motion to compel production of documents to non-party law
2 firm Nettles Law Firm (“Nettles”) filed on August 10, 2018. (ECF No. 331). Nettles filed a Response
3 and Countermotion to Quash on August 24, 2018 (ECF No. 340), and Plaintiffs’ Reply and Response
4 was filed on August 31, 2018 (ECF No. 349).

5 Plaintiffs served Nettles with a subpoena pursuant to F.R.C.P. 45 for the production of
6 documents regarding communications and payments made by and between Schwartz and the
7 Defendants during Nettles representation of certain parties in personal injury claims for which
8 Plaintiffs paid a settlement on behalf of Plaintiffs’ insured. Nettles objected to the subpoena and
9 moved to quash on grounds of work product and trade secret/confidential commercial information.
10 Nettles further objects on the grounds that it is prevented from disclosing confidential client
11 information pursuant to the Model Rules of Professional Conduct relating to former clients. Plaintiffs
12 contend that Nettles has failed to demonstrate the required showing for protection under trade secret or
13 confidential commercial communications or work product, and that all objections based on
14 confidentiality can be addressed by including Nettles as a party to the existing protective order. The
15 Court will address each of these arguments.

16 **A. Work Product**

17 F.R.C.P. 26 (b)(10) provides that parties “may obtain discovery regarding any nonprivileged
18 matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” The
19 information requested by Plaintiffs is both relevant and proportional to the needs of this case, as it
20 involves claims of RICO violations, misrepresentation and fraud where the amount of claimed
21 damages by all parties is very high. A Court must quash or modify a subpoena that requires disclosure
22 of protected matter, Fed. R. Civ. P. 45(d)(3)(A)(iv); and may quash or modify a subpoena that requires
23 disclosure of commercial information, Fed. R. Civ. P. 45(d)(3)(B)(i). However, courts should also
24 consider other factors in deciding motions to quash or modify a subpoena, including the breadth or
25 specificity of the discovery request, and the relevance of the requested information. *See Moon v. SCP*
26 *Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005).

27 The subpoena requests documents and communications between Nettles and the Defendant
28 doctors only. “The burden is on the party asserting [the work product doctrine] to establish . . . that

1 the material sought to be withheld from disclosure . . . [was prepared] by or for another party or by or
2 for that party's representative. *Ward v. CSX Transp., Inc.*, 161 F.R.D. 38, 40 (E.D.N.C. 1995) (citing
3 *City Consumer Services, Inc. v. Horne*, 100 F.R.D. 740, 747 (D. Utah 1983)). Plaintiffs contend that
4 even if Nettles had identified documents claimed to be work product, the protection would not apply
5 because neither Nettles nor its former clients are parties to the litigation. *See Joseph v. Las Vegas*
6 *Metro. Police Dept.*, 2:09-CV-00966-HDM, 2011 WL 846061, at *1 (D. Nev. Mar. 8, 2011).

7 Nettles' work product opposition appears to be theoretical at best. The law firm fails to
8 provide any identification of documents that would arguably be covered by this protection. As Nettles
9 has failed to meet its burden in asserting the work product protection, this objection is overruled.

10 **B. Trade Secret and Confidential Commercial Communications**

11 Nettles' trade secret/confidential commercial communication argument has been presented by
12 other law firms in response to Plaintiffs' subpoena. The law firm argues that the information
13 requested could be used to identify some sort of pattern of how Nettles represents its clients in
14 personal injury claims. Simply invoking trade secret protection from a subpoena is insufficient; a
15 party must first "demonstrate by competent evidence" that the information it is seeking to protect is a
16 trade secret, which would be harmful if disclosed. *Upjohn Co. v. Hygieia Biological Labs.*, 151
17 F.R.D. 355, 358 (E.D. Cal. 1993). The person asserting confidentiality has the burden of showing that
18 the privilege applies to a given set of documents. Fed. R. Civ. P. 45(d); *see also In re Grand Jury*
19 *Investigation*, 974 F.2d 1068, 1070 (9th Cir.1992) (party asserting privilege has burden of proof). The
20 burden also rests with the law firm to present competent evidence that substantial economic harm
21 would result from disclosure of the documents to its competitive position. *Diamond State Ins. Co. v.*
22 *Rebel Oil Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994).

23 Nettles acknowledges that Plaintiffs are not competitors, and has provided no evidence to
24 establish any economic harm would result in compliance with the subpoena. As Nettles has failed to
25 meet its burden to establish a trade secret or confidential commercial communication privilege, this
26 objection is overruled.

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1 **C. Rules of Professional Conduct**

2 Nettles maintains that it is prevented from complying with the subpoena because its clients
3 have expressly prohibited the release of their medical information. Nettles cites to Nevada Rule of
4 Professional Conduct 1.9 regarding an attorney's obligation to not reveal information relating to a
5 former client. Rule 1.9 states that an attorney shall not "[r]eveal information relating to representation
6 except as these Rules would permit or require with respect to a client," Nev. R. Prof. Conduct
7 1.9(c)(2). The professional rules also allow for disclosure of any confidential information when it is
8 in order to "comply with other law or court order." Nev. R. Prof. Conduct 1.6(b)(6). Nettles
9 acknowledges that this Court has the power to order production of information over the objection of
10 clients. The nature of the underlying claims in this litigation is such that the parties contemplated that
11 potentially confidential and/or protected information would need to be disclosed during the discovery
12 process. The parties accounted for this and put in place a detailed protective order that was filed with
13 the Court (ECF. No. 49).

14 **D. Protective Order in Place**

15 On June 6, 2016, the Court approved a stipulated confidentiality and protective order between
16 the parties. That protective order specifically addresses HIPAA concerns, and contemplates the
17 disclosure of protected health information in this litigation. (ECF No. 49, at 3:1-8). The order
18 addressed the sensitive nature of medical records and communications under HIPAA, as well as the
19 dissemination of other potentially protected or private information relating to a claimant, such as those
20 indicated in Plaintiff's subpoena, and other identified claimants similarly situated. The stipulated
21 confidentiality and protective order was entered into by Plaintiffs and Defendants only, and was
22 approved by this Court on May 20, 2016. (ECF No. 49).

23 This protective order governs the conduct of the parties in their use and dissemination of any
24 information and material identified by the order. This includes confidential health information of the
25 type requested in Plaintiffs' subpoena. Nettles was not an original party to this protective order, and
26 the Court finds that extending the protections and scope of the order to Nettles would address any
27 concerns regarding the disclosure of confidential or protected information. Furthermore, once the
28 documents and information are produced, the burden for their use in compliance with the stipulated

1 confidentiality and protective order rest with the parties themselves. Accordingly, the objections
2 based on client consent and confidentiality of former client information are overruled.

3 Therefore, IT IS HEREBY ORDERED that the motion to compel (ECF No. 331) is
4 GRANTED.

5 IT IS FURTHER ORDERED that the confidentiality and protective order approved by the
6 Court and filed on June 6, 2016 (ECF No. 49) and all the safeguards and protections contained therein
7 shall apply to Nettles and to any documents subject to HIPAA or other confidentiality or privacy
8 concerns produced in response to the subpoena issued by Plaintiffs. Nettles is hereby ordered to
9 comply with Plaintiffs' subpoena issued pursuant to F.R.C.P. 45 and shall produce the requested
10 information and documentation. Nettles shall have fifteen (15) days from the date of this order to
11 comply with the subpoena.

12 IT IS SO ORDERED.

13 DATED this 19 day of December, 2018.

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16 UNITED STATES MAGISTRATE JUDGE

17 Respectfully submitted:

18 McCORMICK, BARSTOW, SHEPPARD,
19 WAYTE & CARRUTH LLP

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 26th day of September, 2018, a true and correct copy
3 of **PROPOSED ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL PRODUCTION**
4 **OF DOCUMENTS FROM NETTLES LAW FIRM [ECF No. 331]** was served via the United
5 States District Court CM/ECF system on all parties or persons requiring notice.

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